

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.1818 of 2016

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ORDER:

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This Revision is filed challenging the order dt.18-08-2015 in I.A.No.245 of 2012 in A.S. (SR) No.456 of 2012 of the Additional District Judge, Narsapur.

2. The petitioner herein was the 1st defendant in O.S.No.287 of 2001 on the file of the Junior Civil Judge, Palakol. The 1st respondent herein filed the said suit for cancellation of a registered sale deed dt.04-01-2001 and for costs.

3. The petitioner filed written statement opposing the suit claim.

4. Issues were framed on 08-11-2002. The petitioner engaged a counsel and cross-examined the plaintiffs' witnesses. Evidence on the side of the plaintiff was closed on 29-11-2011 and the matter was posted for the evidence of petitioner. The petitioner, however, did not lead evidence and the matter was adjourned to 05-12-2011, 08-12-2011, 19-12-2011, and on 21-12-2011 the petitioner's side evidence was closed since he did not lead any evidence in spite of imposition of costs on 08-12-2011 and 19-12-2011. Ultimately, the suit was decreed on 29-12-2011.

5. Challenging the same, the petitioner filed the above appeal before the Additional District Judge, Narsapur. He also filed I.A.No.245 of 2012 to condone the delay of 209 days in filing the said appeal.

6. In the affidavit filed in support of the said application, he contended that he suffered from typhoid fever from 05-12-2011 to 31-12-2011. He claimed that on 30-07-2012 the respondents tried to evict him from the plaint schedule property and then only he contacted his advocate and came to know that the suit was decreed. Therefore he filed the appeal on 24-08-2012 along with I.A.No.245 of 2012 seeking condonation of delay of 209 days in filing the appeal.

7. Counter-affidavit was filed by respondents opposing this application. It was contended by respondents that the petitioner had shown irresponsible attitude and behaved with gross negligence. They denied that the petitioner fell sick.

8. By order dt.18-08-2015, I.A.No.245 of 2012 was dismissed. The Court below held that the petitioner had not filed any medical prescription for the alleged period of illness and he had not even applied for certified copies of the judgment and decree of the Court below within the period of limitation to prefer the appeal.

9. Challenging the same, this Revision is filed.

10. Sri Dasari S.V.V.S.V. Prasad, learned counsel for petitioner contends that the Court below had erred in refusing to condone the delay of 209 days in filing the appeal that substantial stakes are involved in the appeal and therefore the delay in filing the appeal deserves to be condoned.

11. Admittedly, petitioner was given four opportunities in the Court below to lead evidence i.e. on 05-12-2011, 08-12-2011, 19-12-2011 and 21-12-2011. The judgment was pronounced on 29-12-2011. No proof of petitioner suffering from illness even for the period from 05-12-2011 to 31-12-2011 in the form of medical prescriptions or medical certificate has been filed and no Doctor has been examined by petitioner. Assuming that the petitioner was suffering from any illness from 05-12-2011 to 31-12-2011, there is no explanation from the petitioner as to why he did not contact his advocate till 30-07-2012. The silence of petitioner for the period of seven months is glaring and indicates negligence and callousness on the part of petitioner.

12. Therefore, I am of the opinion that the Court below was correct in holding that the petitioner has not shown any sufficient cause for condoning the delay of 209 days in filing the appeal.

13. I do not find any merit in the Revision and it is accordingly dismissed. No costs.

14. As a sequel, miscellaneous petitions pending if any, in this Civil Revision Petition shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 08-07-2016

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